



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

October 15, 2003

Ms. Elaine S. Hengen  
Assistant City Attorney  
Office of the City Attorney  
2 Civic Center Plaza  
El Paso, Texas 79901

OR2003-7352

Dear Ms. Hengen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189464.

The City of El Paso (the "city") received a request for all electronic correspondence from specified computers on specified dates. You state that most of the responsive information will be released to the requestor. You contend, however, that the remaining information coming within the scope of the request is either (1) not "public information" for purposes of the Public Information Act (the "Act") or (2) excepted from required disclosure pursuant to section 552.101 of the Government Code.<sup>1</sup>

We first consider the extent to which one of the submitted documents is subject to public disclosure under the Act. Chapter 552 of the Government Code is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it."

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<sup>1</sup>You have provided evidence to this office that the requestor has agreed to exclude from his request the following categories of information encompassed by his request: e-mail addresses excepted under section 552.137 of the Government Code, information excepted under section 552.117 of the Government Code, and information that pertained to the medical health of a citizen. Accordingly, this ruling does not address the extent to which these categories of information are subject to required public disclosure.

You state that the document in question was a "spam" email and "does not relate to any aspect of city business." Based on your comments and our review of the document in question, we agree that it does not relate to the transaction of official city business and therefore does not constitute "public information" of the city. Consequently, the city is not required to disclose this document under chapter 552 of the Government Code. *Cf.* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

We now turn to your remaining claim. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

After carefully reviewing your arguments and the information at issue, we find that some of the information either is not highly intimate or embarrassing for the purpose of common-law privacy or is of legitimate interest to the public. *See* Open Records Decision No. 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job). As you claim no other exceptions, the information must be released.

However, one of the submitted documents contains information relating to a city official's election regarding optional health insurance coverage. This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). As the information in question relates solely to personal financial information, the marked information is excepted from disclosure under section 552.101 in conjunction with common-law privacy.

In summary, one of the submitted documents, a “spam” email, does not constitute “public information” under the Act and may be withheld. Another submitted document contains information that relates solely to personal financial information, and therefore, the marked information must be withheld under section 552.101. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a long, sweeping horizontal line extending to the right.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 189464

Enc. Submitted documents

c: Mr. Emanuel Anthony Martinez  
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(w/o enclosures)